U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

H4

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who on February 22, 1998, applied for admission into the United States at the San Luis, Arizona Port of Entry. The applicant presented a Border Crossing Card (BCC) that did not belong to her. The applicant was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182 (a)(6)(C)(i) for having attempted to procure admission into the United States by fraud. Consequently on the same date the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The record reflects that the applicant reentered the United States in March 2000 without a lawful admission or parole and without permission to reapply for admission in violation of section 276 the Act, 8 U.S.C. § 1326 (a felony). On March 23, 2001, the applicant married a now naturalized U.S. citizen who has filed a Petition for Alien Relative (Form I-130) on her behalf. According to the applicant's own statement she departed to Mexico in March 2001. The applicant is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). She seeks permission to reapply for admission into the United States under section 212(a)(9)(C)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(iii) in order to travel to the United States and reside with her U.S. citizen spouse and children.

The Director determined that the applicant is inadmissible under Section 212(a)(9)(C) of the Act and is not eligible and may not apply for any relief since 10 years have not passed since her last departure. The Director then denied the applicant's Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. *See Director's Decision* dated September 2, 2004.

Section 212(a)(9)(C) of the Act states in pertinent part:

> (C) Aliens unlawfully present after previous immigration violations. -
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> (i) In general. -Any alien who-
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> (I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or
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> (II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.
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> (ii) EXCEPTION. -Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Attorney General [now the Secretary of Homeland Security, "Secretary"] has consented to the alien's reapplying for admission. The Attorney General in the Attorney General's discretion may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Attorney General has granted classification under clause (iii),

(iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—

(1) the alien's having been battered or subjected to extreme cruelty; and

(2) the alien's--

(A) removal;

(B) departure from the United States;

(C) reentry or reentries into the United States; or

(D) attempted reentry into the United States.

The applicant was expeditiously removed from the United States on February 22, 1998. She reentered the United States in March 2000 without a lawful admission or parole and without permission to reapply for admission and was departed the United States in March 2001. She is subject to section 212(a)(9)(C)(i)(II) of the Act and does not qualify for an exception under section 212(a)(9)(C)(ii) of the Act.

On appeal the applicant submits a statement from a pediatrician that states that her child is the carrier of the syndrome of Arnold Chiari type II. In addition, the applicant submits a psychological evaluation and copies of her children's birth certificates, her spouse's naturalization certificate and their marriage certificate.

The applicant is subject to the provisions of section 212(a)(9)(C)(i)(II) of the Act, which is very specific and applicable. The applicant is not eligible to apply for any relief under this Act until 10 years pass after the date of her last departure from the United States and the Secretary has consented to the alien's reapplying for admission. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.